

JUL 11 2002

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS,  
LUFKIN DIVISION**

DAVID J. MALAND, CLERK  
BY  
DEPUTY 

LEXAR MEDIA, INC.,

Plaintiff,

v.

FUJI PHOTO FILM USA, INC.,

MEMOREX PRODUCTS, INC.,

PNY TECHNOLOGIES, INC.

Defendants.

CIVIL ACTION NO. 9:02cv178

**JUDGE HEARTFIELD**

**COMPLAINT**

Plaintiff Lexar Media, Inc. ("Lexar"), by and for its complaint against defendants Fuji Photo Film USA, Inc. ("Fuji"), Memorex Products, Inc., aka Memtek Products, Inc., ("Memorex") and PNY Technologies, Inc. ("PNY"), alleges as follows:

**THE PARTIES**

1. Lexar is a company organized and existing under the laws of Delaware, with its principal place of business in Fremont, California.
2. On information and belief, Fuji is a corporation organized and existing under the laws of New York, with its principal place of business in Elmsford, New York. Fuji can be served by delivery of summons to its registered agent of record,

Prentice-Hall Corp. Systems, Inc., at 800 Brazos Street, Suite 750, Austin, Texas 78701-2554.

3. On information and belief, Memorex is a company organized and existing under the laws of California, with its principal place of business in Santa Fe Springs, California. Memorex can be served by delivery of summons to any of its officers at 10100 Pioneer Blvd., Suite 110, Santa Fe Springs, California 90670.

4. On information and belief, PNY is a company organized and existing under the laws of New Jersey, with its principal place of business in Parsippany, New Jersey. PNY can be served by delivery of summons to its registered agent of record, CT Corporation System, at 350 North St. Paul, Dallas, Texas 75201.

#### **SUBJECT MATTER JURISDICTION**

5. This is an action arising under the United States patent laws, 35 U.S.C. § 101 et seq. This Court has subject matter jurisdiction under 35 U.S.C. §§ 271, 281, and 28 U.S.C. § § 1331 and 1338(a).

#### **PERSONAL JURISDICTION AND VENUE**

6. Personal jurisdiction and venue over Lexar's claims against Fuji are proper in this district pursuant to 28 U.S.C. §§ 1391(b)-(c), and 1400(b) because Fuji does business in this judicial district and part of Lexar's causes of action arose in this judicial district; accordingly, for purposes of venue Fuji is a resident of this district and personal jurisdiction is proper here as well.

7. Personal jurisdiction and venue over Lexar's claims against Memorex are proper in this district pursuant to 28 U.S.C. §§ 1391(b)-(c), and 1400(b) because Memorex does business in this judicial district and part of Lexar's causes of

action arose in this judicial district; accordingly, for venue purposes Memorex is a resident of this district and personal jurisdiction is proper here as well.

8. Personal jurisdiction and venue over Lexar's claims against PNY are proper in this district pursuant to 28 U.S.C. §§ 1391(b)-(c), and 1400(b) because PNY does business in this judicial district and part of Lexar's causes of action arose in this judicial district; accordingly, for venue purposes PNY is a resident of this district and personal jurisdiction is proper here as well.

### **BACKGROUND FACTS COMMON TO ALL CLAIMS**

9. Lexar designs, develops, manufactures and markets flash memory controllers and flash memory cards. Flash memory cards are small, removable memory cards used for data storage with devices such as digital cameras, personal or laptop computers, digital music players, digital camcorders, e-Books and newer cellular phone technology, as well as other emerging products.

### **BACKGROUND FACTS RELEVANT TO THE CLAIMS AGAINST FUJI**

10. On information and belief, Fuji manufactures and supplies flash memory products in markets for "digital film." More specifically, Fuji supplies, at least, the FujiFilm CompactFlash™ and FujiFilm SmartMedia™ product lines that are used as the "film" in digital cameras. These products infringe Lexar's patents.

11. On information and belief, Fuji directly sells its flash memory products around the world and through retailers located throughout the United States and specifically in this judicial district. Retailers of Fuji flash memory products include Target Stores, and specifically, the Target Store located in Lufkin, Texas.

12. On information and belief, Fuji also sells its flash memory products by installing or incorporating them into other Fuji brand electronic products, including Fuji digital cameras. On information and belief, Fuji directly sells such Fuji electronic products, including Fuji digital cameras, around the world and through intermediaries, including retailers located throughout the United States and specifically in this judicial district. Retailers of such Fuji electronic products include Ritz Camera, Target, Circuit City, Sears, OfficeMax and Staples, among others, several of which have stores in Lufkin or other places in this district.

13. As part of its sales of flash memory products in the United States, Fuji markets, promotes, sells and offers for sale a full range of its flash memory products in Lufkin, other places in this district, and throughout the State of Texas. In fact, Fuji even has a direct sales office in Carrollton, Texas to support its customers.

14. On information and belief, Fuji flash memory products have been sold and are currently being sold on the websites of RitzCamera.com and Target.com, which are available to consumers residing in the Eastern District of Texas, including the Lufkin Division. Fuji, RitzCamera.com and Target.com do not restrict or otherwise prevent consumers residing in the Eastern District of Texas or the Lufkin Division from purchasing Fuji flash memory products on the RitzCamera.com and Target.com websites.

15. On information and belief, Fuji electronic products incorporating the FujiFilm CompactFlash™ or FujiFilm SmartMedia™ cards, including FujiFilm Finepix digital cameras, have been sold and are currently being sold on the website of RitzCamera.com, Target.com, CircuitCity.com, Sears.com, OfficeMax.com and Staples.com, among others, which are available to consumers residing in the Eastern

District of Texas, including the Lufkin Division. Fuji, RitzCamera.com, Target.com, CircuitCity.com, Sears.com, OfficeMax.com and Staples.com do not restrict or otherwise prevent consumers residing in the Eastern District of Texas, including the Lufkin Division, from purchasing such Fuji electronic products on these websites.

16. On information and belief, Fuji directly markets, promotes, sells, offers for sale, or leases its flash memory products in the Eastern District of Texas, including the Lufkin Division. On information and belief, Fuji also markets, promotes, sells, offers for sale, or leases its flash memory products, including the CompactFlash™ and SmartMedia™ product lines, in numerous locations throughout the Eastern District of Texas, including the Lufkin Division, by way of intermediaries, such as retailers.

17. Fuji is currently offering for sale a full range of its flash memory products in the Eastern District of Texas, including the Lufkin Division, such as the CompactFlash™ and SmartMedia™ product lines. Fuji is selling these flash memory products as stand-alone products or bundled with other Fuji electronic products, directly or indirectly through various internet and retail outlets serving the Eastern District of Texas, including the Lufkin division.

18. On information and belief, Fuji has knowingly and intentionally formed a channel of distribution for its flash memory products, including the CompactFlash™ and SmartMedia™ product lines, into the Eastern District of Texas, including the Lufkin Division. Fuji knows or should have known that the Eastern District of Texas, including the Lufkin Division, was a termination point of its distribution channel for flash memory products, including the CompactFlash™ and SmartMedia™ product lines.

19. On information and belief, Fuji has offered and continues to offer warranties on its flash memory products sold to consumers in the United States. Warranties have been offered and continue to be offered on Fuji's flash memory products, including the CompactFlash™ and SmartMedia™ product lines, to consumers residing in the Eastern District of Texas, including the Lufkin Division. On information and belief, consumers can obtain warranty information and warranty registration materials for Fuji's products from the retail outlets located in the Lufkin Division that sell Fuji flash memory products, including the CompactFlash™ and SmartMedia™ product lines. On information and belief, Fuji warranty information and warranty registration materials for Fuji's flash memory products are included within the package of each retail Fuji product sold. This information can also be obtained on Fuji's website, which is described more fully in the following paragraphs.

20. On information and belief, Fuji offers a lifetime warranty on at least some of its flash memory products, including products in the CompactFlash™ and SmartMedia™ product lines. The Fuji warranty provides that Fuji "warrants each consumer video and audio products during its lifetime against defective workmanship or materials, and will replace any defective product free of charge when returned to a FujiFilm dealer or to FujiFilm...If FujiFilm is unable to replace any defective product, it will refund the purchase price." *See, e.g.,* <http://www.fujifilm.com/JSP/fuji/epartners/Faq.jsp?id=212529&returnTo=ServiceSupport&category=211151#212529>.

21. The Fuji warranty registration material on its flash memory products, including the CompactFlash™ and SmartMedia™ product lines, which is

enclosed within the package of each retail product, requires the consumer to complete a mail-in card enclosed with the product and mail the registration materials to Fuji's Warranty Registration Division. This warranty registration material refers consumers to Fuji's website.

22. On information and belief, Fuji engages in substantial e-commerce by way of the internet or world-wide web and does business in the Eastern District of Texas, including the Lufkin Division, through its interactive website, which is located at <http://www.fujifilm.com> and <http://www.fujifilm.com/JSP/fuji/epartners/HomePage.jsp?flash=true>.

23. Fuji's website promotes, advertises and markets Fuji's flash memory products. The Fuji website directs consumers to order a full range of Fuji parts and accessories, including memory cards, by contacting Fuji's Parts Department in Edison, New Jersey or calling 1-800-659-3854.

24. Fuji's website provides consumers with warranty information related to its audio and video recording media products, including its CompactFlash™ and SmartMedia™ product lines. *See, e.g.,* <http://www.fujifilm.com/JSP/fuji/epartners/Faq.jsp?id=212529&returnTo=Search&search=warranty&searchMode=1#212529>. Fuji does not restrict or otherwise prevent consumers residing in the Eastern District of Texas or the Lufkin Division from initiating warranty claims or obtaining warranty information about Fuji's flash memory products from its website.

25. Fuji invites consumers to contact it via e-mail or telephone with respect to product information, rebate information, customer service issues or technical

support that consumers need for the proper operation and use of Fuji's flash memory products, including the CompactFlash™ and SmartMedia™ product lines. *See, e.g.,* <http://www.fujifilm.com/JSP/fuji/epartners/ContactUs.jsp?pagePostSerialID=13#scrollToMe>. Fuji does not restrict or otherwise prevent consumers residing in the Eastern District of Texas or the Lufkin Division from obtaining such customer service information or technical support for Fuji's flash memory products from its website.

26. As the preceding paragraphs show, Fuji clearly does business in the Eastern District of Texas, including the Lufkin Division, by virtue of its established channels of distribution, advertising and promotion through its website and other means.

#### **BACKGROUND FACTS RELEVANT TO THE CLAIMS AGAINST MEMOREX**

27. On information and belief, Memorex manufactures and supplies flash memory products as "digital film." More specifically, Memorex supplies, at least, the Memorex CompactFlash™ product line of "digital film" that infringes Lexar's patents.

28. On information, Memorex directly sells its flash memory products around the world and through intermediaries, including wholesalers, distributors, value-added resellers, and retailers located throughout the United States, some of which are located in this judicial district. Retailers of Memorex flash memory products include CompUSA, Office Depot, PC Connection, Staples, Best Buy and Kmart, among others. *See, e.g.,*

[http://www.memorex.com/products/product\\_display.php?cid=29&pid=13&oid=17](http://www.memorex.com/products/product_display.php?cid=29&pid=13&oid=17),

[http://www.memorex.com/products/product\\_display.php?cid=29&pid=4&oid=6](http://www.memorex.com/products/product_display.php?cid=29&pid=4&oid=6),

[http://www.memorex.com/products/product\\_display.php?cid=29&pid=12&oid=16](http://www.memorex.com/products/product_display.php?cid=29&pid=12&oid=16),



[http://www.memorex.com/products/product\\_display.php?cid=29&pid=2&oid=2](http://www.memorex.com/products/product_display.php?cid=29&pid=2&oid=2),  
[http://www.memorex.com/products/product\\_display.php?cid=29&pid=14&oid=18](http://www.memorex.com/products/product_display.php?cid=29&pid=14&oid=18) and  
<http://www.bestbuy.com/search/sr01.asp?m=0&SC=site&SV=memorex>.

29. As part of its sales of flash memory products in the United States, Memorex markets, promotes, sells and offers for sale a full range of its flash memory products in the Eastern District of Texas, including the Lufkin Division, and throughout the State of Texas.

30. On information and belief, Memorex flash memory products, including the CompactFlash™ product line, have been offered for sale and are currently being sold on the websites of Amazon.com, Buy.com, Computers4Sure.com, Solutions4Sure.com and BestBuy.com, all of which are available to consumers residing in the Eastern District of Texas, including the Lufkin Division. Memorex, Amazon, Buy, Computers4Sure, Solutions4Sure and Best Buy do not restrict or otherwise prevent consumers residing in the Eastern District of Texas or the Lufkin Division from purchasing Memorex flash memory products on these websites. *See Id.*

31. On information and belief, Memorex directly markets, promotes, sells, offers for sale, or leases its flash memory products, including the CompactFlash™ product line, in the Eastern District of Texas, including the Lufkin Division. On information and belief, Memorex also markets, promotes, sells, offers for sale, or leases its flash memory products, including the CompactFlash™ product line, in locations throughout the Eastern District of Texas, including the Lufkin Division, by way of intermediaries such as retailers, including the Kmart and Office Depot stores in Lufkin, Texas and Staples in Nacogdoches, Texas.

32. On information and belief, Memorex has knowingly and intentionally formed a channel of distribution for its flash memory products, including the CompactFlash™ product line, into the Eastern District of Texas, including the Lufkin Division. Memorex knows or should have known that the Eastern District of Texas, including the Lufkin Division, was a termination point of its distribution channel for flash memory products, including the CompactFlash™ product line.

33. On information and belief, Memorex has offered and continues to offer warranties on its flash memory products sold to consumers in the United States. Warranties have been offered and continue to be offered on Memorex's flash memory products, including the CompactFlash™ product line, to consumers residing in the Eastern Division of Texas, including the Lufkin Division. On information and belief, consumers can obtain warranty information and warranty registration materials for Memorex's products from the retail outlets located in the Lufkin Division that sell Memorex flash memory products, including the CompactFlash™ product line. On information and belief, Memorex warranty information and warranty registration materials for Memorex's flash memory products are included within the package of each retail Memorex product sold. This information can also be obtained on Memorex's website, which is described more fully in the following paragraphs.

34. On information and belief, Memorex engages in substantial e-commerce by way of the internet or world-wide web and does business in the Eastern District of Texas, including the Lufkin Division, through its "webstore" website located at <http://ememorex.com> and its corporate website located at <http://www.memorex.com/mainindex.php>.

35. Memorex's webstore website and corporate website are highly interactive in its promotion, advertising and marketing of Memorex's flash memory products. For example, Memorex's webstore website allows consumers to shop for, order and purchase a full range of Memorex's flash memory products. On information and belief, consumers in Texas, including consumers residing in the Eastern District of Texas and the Lufkin Division, have reviewed or seen such offers for sale or purchased Memorex's flash memory products, including products from the CompactFlash™ product line, through Memorex's webstore website. Memorex does not restrict or otherwise prevent consumers residing in the Eastern District of Texas or the Lufkin Division from purchasing Memorex's flash memory products on or through its webstore website.

36. Memorex's webstore website and corporate website provide consumers with warranty information related to its flash memory products, including its CompactFlash™ product line. *See, e.g.,* [http://www.ememorex.com/policies/consumer\\_sale.asp?#section3](http://www.ememorex.com/policies/consumer_sale.asp?#section3), [http://www.memorex.com/service\\_support/faq.php?dsply=1&type=qa&cid=12](http://www.memorex.com/service_support/faq.php?dsply=1&type=qa&cid=12) and [http://www.memorex.com/service\\_support/faq.php?dsply=1&type=qa&cid=12&full=1#qa193](http://www.memorex.com/service_support/faq.php?dsply=1&type=qa&cid=12&full=1#qa193). Memorex does not restrict or otherwise prevent consumers residing in the Eastern District of Texas or the Lufkin Division from initiating warranty claims or obtaining warranty information about Memorex's flash memory products from its websites.

37. Memorex allows consumers to register warranty information for its flash memory products, including products from the CompactFlash™ product line, through its corporate website. *See, e.g.,*

[http://www.customernation.com/pls/ps/ps.ps\\_main?p\\_host=298&p\\_supplier=5092&p\\_parm=PSR](http://www.customernation.com/pls/ps/ps.ps_main?p_host=298&p_supplier=5092&p_parm=PSR). To register a flash memory product for warranty purposes, the consumer must complete several fields of inquiry and provide requested information to Memorex, including the consumer's residence and where the Memorex product was purchased. *See Id.* Memorex does not restrict or otherwise prevent consumers residing in the Eastern District of Texas or the Lufkin Division from registering Memorex's flash memory products on or through its website.

38. Memorex invites consumers to contact it via e-mail with respect to product information, rebate information, customer service issues or technical support that consumers need for the proper operation and use of Memorex's flash memory products, including the CompactFlash™ product line. *See, e.g.,* [http://www.memorex.com/service\\_support/index.php](http://www.memorex.com/service_support/index.php) and [http://www.memorex.com/contact\\_memorex/corporate.php](http://www.memorex.com/contact_memorex/corporate.php). Memorex does not restrict or otherwise prevent consumers residing in the Eastern District of Texas or the Lufkin Division from obtaining such customer service information or technical support for Memorex's flash memory products from its website.

39. As the preceding paragraphs show, Memorex clearly does business in the Eastern District of Texas, including the Lufkin Division, by virtue of its established channels of distribution, advertising and promotion through its websites and other means.

#### **BACKGROUND FACTS RELEVANT TO THE CLAIMS AGAINST PNY**

40. On information and belief, PNY manufactures and supplies flash memory products as "digital film." More specifically, PNY offers for sale and sells, at

least, the PNY CompactFlash™ product line as “digital film” that infringes Lexar’s patents.

41. On information, PNY directly sells its flash memory products around the world and through retailers located throughout the United States and specifically in this judicial district. Retailers of PNY flash memory products include Best Buy, CompUSA and Staples, among others. *See, e.g.,* [http://www.pny.com/home/Wheretobuy/buy\\_index.cfm](http://www.pny.com/home/Wheretobuy/buy_index.cfm).

42. As part of its sales of flash memory products in the United States, PNY markets, promotes, sells and offers for sale a full range of its flash memory products in the Eastern District of Texas, including the Lufkin Division, and throughout the State of Texas. In fact, PNY’s website lists three separate addresses within Texas at which PNY’s sales representatives are located, including Plano, Texas, which is in this district. *See, e.g.,* [http://www.pny.com/home/oem/sr\\_index.cfm?file=salesreps1.cfm](http://www.pny.com/home/oem/sr_index.cfm?file=salesreps1.cfm).

43. On information and belief, PNY flash memory products, including the CompactFlash™ product line, have been sold and are currently being sold on the websites of Amazon.com, Buy.com, AOL.com, ENPC.com, newegg.com and Staples.com, all of which are available to consumers residing in the Eastern District of Texas, including the Lufkin Division. PNY, Amazon, Buy, AOL, ENPC, New Egg and Staples do not restrict or otherwise prevent consumers residing in the Lufkin Division from purchasing PNY flash memory products on these websites. *See, e.g.,* [http://www.pny.com/home/Wheretobuy/buy\\_index.cfm](http://www.pny.com/home/Wheretobuy/buy_index.cfm).

44. PNY has sold and is currently selling its flash memory products in the Eastern District of Texas, including the Lufkin Division. PNY is selling these flash

memory products either directly or indirectly through retail outlets in this district, including Staples in Nacogdoches, Texas.

45. On information and belief, PNY has knowingly and intentionally formed a channel of distribution for its flash memory products, including the CompactFlash™ product line, into the Eastern District of Texas, including the Lufkin Division. PNY knows or should have known that the Eastern District of Texas, including the Lufkin Division, was a termination point of its distribution channel for flash memory products, including the CompactFlash™ product line.

46. On information and belief, PNY has offered and continues to offer warranties on its flash memory products sold to consumers in the United States. Warranties have been offered and continue to be offered on PNY's flash memory products, including the CompactFlash™ product line, to consumers residing in the Eastern District of Texas, including the Lufkin Division. On information and belief, consumers can obtain warranty information and warranty registration materials for PNY's products from the retail outlets located in the Lufkin Division that sell PNY flash memory products, including the CompactFlash™ product line. On information and belief, PNY warranty information and warranty registration materials for PNY's flash memory products are included within the package of each retail PNY product sold. This information can also be obtained on PNY's website, which is described more fully in the following paragraphs.

47. On information and belief, PNY offers a lifetime warranty on at least some of its flash memory products, including products in the CompactFlash™ product line. The PNY warranty provides that PNY "will honor its products

warranty...and offers lifetime exchanges on defective products. If the Compact Flash Card is defective in any way,” PNY “will gladly exchange it.” *See, e.g.,* <http://www.pny.com/home/techsupport/faqs/readfaq.cfm?mainid=122&row=6>.

48. PNY’s website is highly interactive in its promotion, advertising and marketing of PNY’s flash memory products. For example, PNY’s website directs consumers to shop for, order and purchase a full range of PNY’s flash memory products directly from several members of PNY’s distribution network. For example, PNY lists the names of companies who sell PNY’s flash memory products at [http://www.pny.com/home/Wheretobuy/buy\\_index.cfm](http://www.pny.com/home/Wheretobuy/buy_index.cfm). A simple click on the company logo of one of these companies will take consumers directly to that company’s website, where consumers can shop for, order and purchase PNY products, including flash memory products. On information and belief, consumers in Texas, including consumers residing in the Eastern District of Texas, Lufkin Division, have seen these offers for sale or purchased PNY’s flash memory products, including products from the CompactFlash™ product line, in this manner.

49. PNY’s website provides consumers with warranty information related to its flash memory products, including its CompactFlash™ product line. *See, e.g.,* <http://www.pny.com/home/techsupport/faqs/readfaq.cfm?mainid=122&row=6>. PNY does not restrict or otherwise prevent consumers residing in the Eastern District of Texas, including the Lufkin Division, from initiating warranty claims or obtaining warranty information about PNY’s flash memory products from its website.

50. PNY allows consumers to register warranty information for its flash memory products, including products from the CompactFlash™ product line,

through its website. *See, e.g.,*

[http://www.pny.com/home/techsupport/prodreg\\_index.cfm](http://www.pny.com/home/techsupport/prodreg_index.cfm). To register a flash memory product for warranty purposes, the consumer must complete several fields of inquiry and provide requested information to PNY, including the consumer's residence and where the PNY product was purchased. *See Id.* PNY does not restrict or otherwise prevent consumers residing in the Eastern District of Texas or the Lufkin Division from registering PNY's flash memory products on or through its website.

51. PNY invites consumers to contact it via e-mail or telephone with respect to product information, rebate information, customer service issues or technical support that consumers need for the proper operation and use of PNY's flash memory products, including the CompactFlash™ product line. *See, e.g.,* <http://www.pny.com/home/insidepny/support.cfm> and [http://www.pny.com/home/techsupport/rebates\\_index.cfm?Department=Rebate+Inquiries](http://www.pny.com/home/techsupport/rebates_index.cfm?Department=Rebate+Inquiries). PNY does not restrict or otherwise prevent consumers residing in the Eastern District of Texas or the Lufkin Division from obtaining such customer service information or technical support for PNY's flash memory products from its website.

52. As the preceding paragraphs show, PNY clearly does business in the Eastern District of Texas, including the Lufkin Division, by virtue of its established chains of distribution, advertising and promotion through its website and other means.

**COUNT ONE**  
**Infringement Of United States Patent No. 5,907,856 By Fuji**

53. Lexar incorporates by reference paragraphs 1 through 26 as though fully set forth herein.



54. Lexar is the owner of all right, title, and interest in United States Patent Number 5,907,856 (“the ‘856 patent”), which was duly and legally issued to Lexar on May 25, 1999, and entitled “Moving Sectors Within A Block Of Information In A Flash Memory Mass Storage Architecture.” A copy of the ‘856 patent is attached hereto as Exhibit A.

55. Lexar has never licensed or permitted Fuji to practice any of the claims granted in the ‘856 patent.

56. On information and belief, Fuji has infringed the ‘856 patent, literally and/or by equivalents, by making, using, selling, offering for sale, leasing, or importing flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the ‘856 patent. On information and belief, Fuji continues to engage in such acts of infringement.

57. On information and belief, Fuji, with full knowledge of Lexar’s ownership interests in the ‘856 patent, has intentionally induced and is currently inducing others to infringe the ‘856 patent, or has contributed to the infringement of the ‘856 patent by actively and knowingly aiding and abetting others to make, use, sell, offer for sale, lease, or import flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the ‘856 patent, either literally and/or by equivalents.

58. Fuji’s infringement of the ‘856 patent has been willful, and any further infringement of the ‘856 patent by Fuji would be with full knowledge of Lexar’s legal interest in the ‘856 patent and would be deliberate and willful.

**COUNT TWO**  
**Infringement Of United States Patent No. 5,907,856 By Memorex**

59. Lexar incorporates by reference paragraphs 1 through 9 and 27-39 as though fully set forth herein.

60. Lexar has never licensed or permitted Memorex to practice any of the claims granted in the '856 patent.

61. On information and belief, Memorex has infringed the '856 patent, literally and/or by equivalents, by making, using, selling, offering for sale, leasing, or importing flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '856 patent. On information and belief, Memorex continues to engage in such acts of infringement.

62. On information and belief, Memorex, with full knowledge of Lexar's ownership interests in the '856 patent, has intentionally induced and is currently inducing others to infringe the '856 patent, or has contributed to the infringement of the '856 patent by actively and knowingly aiding and abetting others to make, use, sell, offer for sale, lease, or import flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '856 patent, either literally and/or by equivalents.

63. Memorex's infringement of the '856 patent has been willful, and any further infringement of the '856 patent by Memorex would be with full knowledge of Lexar's legal interest in the '856 patent and would be deliberate and willful.

**COUNT THREE**  
**Infringement Of United States Patent No. 5,907,856 By PNY**

64. Lexar incorporates by reference paragraphs 1 through 9 and 40-52 as though fully set forth herein.

65. Lexar has never licensed or permitted PNY to practice any of the claims granted in the '856 patent.

66. On information and belief, PNY has infringed the '856 patent, literally and/or by equivalents, by making, using, selling, offering for sale, leasing, or importing flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '856 patent. On information and belief, PNY continues to engage in such acts of infringement.

67. On information and belief, PNY, with full knowledge of Lexar's ownership interests in the '856 patent, has intentionally induced and is currently inducing others to infringe the '856 patent, or has contributed to the infringement of the '856 patent by actively and knowingly aiding and abetting others to make, use, sell, offer for sale, lease, or import flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '856 patent, either literally and/or by equivalents.

68. PNY's infringement of the '856 patent has been willful, and any further infringement of the '856 patent by PNY would be with full knowledge of Lexar's legal interest in the '856 patent and would be deliberate and willful.

**COUNT FOUR**  
**Infringement Of United States Patent No. 5,930,815 By Fuji**

69. Lexar incorporates by reference paragraphs 1 through 26 as though fully set forth herein.

70. Lexar is the owner of all right, title, and interest in United States Patent No. 5,930,815 (“the ‘815 patent”), which was duly and legally issued to Lexar on July 27, 1999, and entitled “Moving Sequential Sectors Within A Block Of Information In A Flash Memory Mass Storage Architecture.” A copy of the ‘815 patent is attached hereto as Exhibit B.

71. Lexar has never licensed or permitted Fuji to practice any of the claims granted in the ‘815 patent.

72. On information and belief, Fuji has infringed the ‘815 patent, literally and/or by equivalents, by making, using, selling, offering for sale, leasing, or importing flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the ‘815 patent. On information and belief, Fuji continues to engage in such acts of infringement.

73. On information and belief, Fuji, with full knowledge of Lexar’s ownership interests in the ‘815 patent, has intentionally induced and is currently inducing others to infringe the ‘815 patent, or has contributed to the infringement of the ‘815 patent by actively and knowingly aiding and abetting others to make, use, sell, offer for sale, lease or import flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the ‘815 patent, either literally and/or by equivalents.

74. Fuji's infringement of the '815 patent has been willful, and any further infringement of the '815 patent by Fuji would be with full knowledge of Lexar's legal interest in the '815 patent and would be deliberate and willful.

**COUNT FIVE**  
**Infringement Of United States Patent No. 5,930,815 By Memorex**

75. Lexar incorporates by reference paragraphs 1 through 9 and 27-39 as though fully set forth herein.

76. Lexar has never licensed or permitted Memorex to practice any of the claims granted in the '815 patent.

77. On information and belief, Memorex has infringed the '815 patent, literally and/or by equivalents, by making, using, selling, offering for sale, leasing, or importing flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '815 patent. On information and belief, Memorex continues to engage in such acts of infringement.

78. On information and belief, Memorex, with full knowledge of Lexar's ownership interests in the '815 patent, has intentionally induced and is currently inducing others to infringe the '815 patent, or has contributed to the infringement of the '815 patent by actively and knowingly aiding and abetting others to make, use, sell, offer for sale, lease or import flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '815 patent, either literally and/or by equivalents.

79. Memorex's infringement of the '815 patent has been willful, and any further infringement of the '815 patent by Memorex would be with full knowledge of Lexar's legal interest in the '815 patent and would be deliberate and willful.

**COUNT SIX**  
**Infringement Of United States Patent No. 5,930,815 By PNY**

80. Lexar incorporates by reference paragraphs 1 through 9 and 40-52 as though fully set forth herein.

81. Lexar has never licensed or permitted PNY to practice any of the claims granted in the '815 patent.

82. On information and belief, PNY has infringed the '815 patent, literally and/or by equivalents, by making, using, selling, offering for sale, leasing, or importing flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '815 patent. On information and belief, PNY continues to engage in such acts of infringement.

83. On information and belief, PNY, with full knowledge of Lexar's ownership interests in the '815 patent, has intentionally induced and is currently inducing others to infringe the '815 patent, or has contributed to the infringement of the '815 patent by actively and knowingly aiding and abetting others to make, use, sell, offer for sale, lease or import flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '815 patent, either literally and/or by equivalents.

84. PNY's infringement of the '815 patent has been willful, and any further infringement of the '815 patent by PNY would be with full knowledge of Lexar's legal interest in the '815 patent and would be deliberate and willful.

**COUNT SEVEN**  
**Infringement Of United States Patent No. 6,145,051 By Fuji**

85. Lexar incorporates by reference paragraphs 1 through 26 as though fully set forth herein.

86. Lexar is the owner of all right, title, and interest in United States Patent No. 6,145,051 ("the '051 patent"), which was duly and legally issued to Lexar on November 7, 2000 and entitled "Moving Sectors Within A Block Of Information In A Flash Memory Mass Storage Architecture" A copy of the '051 patent is attached hereto as Exhibit C.

87. Lexar has never licensed or permitted Fuji to practice any of the claims granted in the '051 patent.

88. On information and belief, Fuji has infringed the '051 patent, literally and/or by equivalents, by making, using, selling, offering for sale, leasing, or importing flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '051 patent. On information and belief, Fuji continues to engage in such acts of infringement.

89. On information and belief, Fuji, with full knowledge of Lexar's ownership interests in the '051 patent, has intentionally induced and is currently inducing others to infringe the '051 patent, or has contributed to the infringement of the '051 patent by actively and knowingly aiding and abetting others to make, use, sell, offer for

sale, lease or import flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '051 patent, either literally and/or by equivalents.

90. Fuji's infringement of the '051 patent has been willful, and any further infringement of the '051 patent by Fuji would be with full knowledge of Lexar's legal interest in the '051 patent and would be deliberate and willful.

**COUNT EIGHT**  
**Infringement Of United States Patent No. 6,145,051 By Memorex**

91. Lexar incorporates by reference paragraphs 1 through 9 and 27-39 as though fully set forth herein.

92. Lexar has never licensed or permitted Memorex to practice any of the claims granted in the '051 patent.

93. On information and belief, Memorex has infringed the '051 patent, literally and/or by equivalents, by making, using, selling, offering for sale, leasing, or importing flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '051 patent. On information and belief, Memorex continues to engage in such acts of infringement.

94. On information and belief, Memorex, with full knowledge of Lexar's ownership interests in the '051 patent, has intentionally induced and is currently inducing others to infringe the '051 patent, or has contributed to the infringement of the '051 patent by actively and knowingly aiding and abetting others to make, use, sell, offer for sale, lease or import flash memory products into the United States, including the



Lufkin Division, that infringe one or more of the claims of the '051 patent, either literally and/or by equivalents.

95. Memorex's infringement of the '051 patent has been willful, and any further infringement of the '051 patent by Memorex would be with full knowledge of Lexar's legal interest in the '051 patent and would be deliberate and willful.

**COUNT NINE**  
**Infringement Of United States Patent No. 6,145,051 By PNY**

96. Lexar incorporates by reference paragraphs 1 through 9 and 40-52 as though fully set forth herein.

97. Lexar has never licensed or permitted PNY to practice any of the claims granted in the '051 patent.

98. On information and belief, PNY has infringed the '051 patent, literally and/or by equivalents, by making, using, selling, offering for sale, leasing, or importing flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '051 patent. On information and belief, PNY continues to engage in such acts of infringement.

99. On information and belief, PNY, with full knowledge of Lexar's ownership interests in the '051 patent, has intentionally induced and is currently inducing others to infringe the '051 patent, or has contributed to the infringement of the '051 patent by actively and knowingly aiding and abetting others to make, use, sell, offer for sale, lease or import flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '051 patent, either literally and/or by equivalents.

100. PNY's infringement of the '051 patent has been willful, and any further infringement of the '051 patent by PNY would be with full knowledge of Lexar's legal interest in the '051 patent and would be deliberate and willful.

**COUNT TEN**  
**Infringement Of United States Patent No. 6,034,897 By Fuji**

101. Lexar incorporates by reference paragraphs 1 through 26 as though fully set forth herein.

102. Lexar is the owner of all right, title, and interest in United States Patent No. 6,034,897 ("the '897 patent"), which was duly and legally issued to Lexar on March 7, 2000 and entitled "Space Management For Managing High Capacity Nonvolatile Memory." A copy of the '897 patent is attached hereto as Exhibit D.

103. Lexar has never licensed or permitted Fuji to practice any of the claims granted in the '897 patent.

104. On information and belief, Fuji has infringed the '897 patent, literally and/or by equivalents, by making, using, selling, offering for sale, leasing, or importing flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '897 patent. On information and belief, Fuji continues to engage in such acts of infringement.

105. On information and belief, Fuji, with full knowledge of Lexar's ownership interests in the '897 patent, has intentionally induced and is currently inducing others to infringe the '897 patent, or has contributed to the infringement of the '897 patent by actively and knowingly aiding and abetting others to make, use, sell, offer for sale, lease or import flash memory products into the United States, including the Lufkin

Division, that infringe one or more of the claims of the '897 patent, either literally and/or by equivalents.

106. Fuji's infringement of the '897 patent has been willful, and any further infringement of the '897 patent by Fuji would be with full knowledge of Lexar's legal interest in the '897 patent and would be deliberate and willful.

**COUNT ELEVEN**  
**Infringement Of United States Patent No. 6,034,897 By Memorex**

107. Lexar incorporates by reference paragraphs 1 through 9 and 27-39 as though fully set forth herein.

108. Lexar has never licensed or permitted Memorex to practice any of the claims granted in the '897 patent.

109. On information and belief, Memorex has infringed the '897 patent, literally and/or by equivalents, by making, using, selling, offering for sale, leasing, or importing flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '897 patent. On information and belief, Memorex continues to engage in such acts of infringement.

110. On information and belief, Memorex, with full knowledge of Lexar's ownership interests in the '897 patent, has intentionally induced and is currently inducing others to infringe the '897 patent, or has contributed to the infringement of the '897 patent by actively and knowingly aiding and abetting others to make, use, sell, offer for sale, lease or import flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '897 patent, either literally and/or by equivalents.

111. Memorex's infringement of the '897 patent has been willful, and any further infringement of the '897 patent by Memorex would be with full knowledge of Lexar's legal interest in the '897 patent and would be deliberate and willful.

**COUNT TWELVE**  
**Infringement Of United States Patent No. 6,034,897 By PNY**

112. Lexar incorporates by reference paragraphs 1 through 9 and 40-52 as though fully set forth herein.

113. Lexar has never licensed or permitted PNY to practice any of the claims granted in the '897 patent.

114. On information and belief, PNY has infringed the '897 patent, literally and/or by equivalents, by making, using, selling, offering for sale, leasing, or importing flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '897 patent. On information and belief, PNY continues to engage in such acts of infringement.

115. On information and belief, PNY, with full knowledge of Lexar's ownership interests in the '897 patent, has intentionally induced and is currently inducing others to infringe the '897 patent, or has contributed to the infringement of the '897 patent by actively and knowingly aiding and abetting others to make, use, sell, offer for sale, lease or import flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '897 patent, either literally and/or by equivalents.

116. PNY's infringement of the '897 patent has been willful, and any further infringement of the '897 patent by PNY would be with full knowledge of Lexar's legal interest in the '897 patent and would be deliberate and willful.

**COUNT THIRTEEN**  
**Infringement Of United States Patent No. 6,134,151 By Fuji**

117. Lexar incorporates by reference paragraphs 1 through 26 as though fully set forth herein.

118. Lexar is the owner of all right, title, and interest in United States Patent No. 6,134,151 ("the '151 patent"), which was duly and legally issued to Lexar on October 17, 2000 and entitled "Space Management For Managing High Capacity Nonvolatile Memory." A copy of the '151 patent is attached hereto as Exhibit E.

119. Lexar has never licensed or permitted Fuji to practice any of the claims granted in the '151 patent.

120. On information and belief, Fuji has infringed the '151 patent, literally and/or by equivalents, by making, using, selling, offering for sale, leasing, or importing flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '151 patent. On information and belief, Fuji continues to engage in such acts of infringement.

121. On information and belief, Fuji, with full knowledge of Lexar's ownership interests in the '151 patent, has intentionally induced and is currently inducing others to infringe the '151 patent, or has contributed to the infringement of the '151 patent by actively and knowingly aiding and abetting others to make, use, sell, offer for sale, lease or import flash memory products into the United States, including the Lufkin

Division, that infringe one or more of the claims of the '151 patent, either literally and/or by equivalents.

122. Fuji's infringement of the '151 patent has been willful, and any further infringement of the '151 patent by Fuji would be with full knowledge of Lexar's legal interest in the '151 patent and would be deliberate and willful.

**COUNT FOURTEEN**  
**Infringement Of United States Patent No. 6,134,151 By Memorex**

123. Lexar incorporates by reference paragraphs 1 through 9 and 27-39 as though fully set forth herein.

124. Lexar has never licensed or permitted Memorex to practice any of the claims granted in the '151 patent.

125. On information and belief, Memorex has infringed the '151 patent, literally and/or by equivalents, by making, using, selling, offering for sale, leasing, or importing flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '151 patent. On information and belief, Memorex continues to engage in such acts of infringement.

126. On information and belief, Memorex, with full knowledge of Lexar's ownership interests in the '151 patent, has intentionally induced and is currently inducing others to infringe the '151 patent, or has contributed to the infringement of the '151 patent by actively and knowingly aiding and abetting others to make, use, sell, offer for sale, lease or import flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '151 patent, either literally and/or by equivalents.

127. Memorex's infringement of the '151 patent has been willful, and any further infringement of the '151 patent by Memorex would be with full knowledge of Lexar's legal interest in the '151 patent and would be deliberate and willful.

**COUNT FIFTEEN**  
**Infringement Of United States Patent No. 6,134,151 By PNY**

128. Lexar incorporates by reference paragraphs 1 through 9 and 40-52 as though fully set forth herein.

129. Lexar has never licensed or permitted PNY to practice any of the claims granted in the '151 patent.

130. On information and belief, PNY has infringed the '151 patent, literally and/or by equivalents, by making, using, selling, offering for sale, leasing, or importing flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '151 patent. On information and belief, PNY continues to engage in such acts of infringement.

131. On information and belief, PNY, with full knowledge of Lexar's ownership interests in the '151 patent, has intentionally induced and is currently inducing others to infringe the '151 patent, or has contributed to the infringement of the '151 patent by actively and knowingly aiding and abetting others to make, use, sell, offer for sale, lease or import flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '151 patent, either literally and/or by equivalents.

132. PNY's infringement of the '151 patent has been willful, and any further infringement of the '151 patent by PNY would be with full knowledge of Lexar's legal interest in the '151 patent and would be deliberate and willful.

**COUNT SIXTEEN**  
**Infringement Of United States Patent No. 6,262,918 By Fuji**

133. Lexar incorporates by reference paragraphs 1 through 26 as though fully set forth herein.

134. Lexar is the owner of all right, title, and interest in United States Patent No. 6,262,918 ("the '918 patent"), which was duly and legally issued to Lexar on July 17, 2001 and entitled "Space Management For Managing High Capacity Nonvolatile Memory." A copy of the '918 patent is attached hereto as Exhibit F.

135. Lexar has never licensed or permitted Fuji to practice any of the claims granted in the '918 patent.

136. On information and belief, Fuji has infringed the '918 patent, literally and/or by equivalents, by making, using, selling, offering for sale, leasing, or importing flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '918 patent. On information and belief, Fuji continues to engage in such acts of infringement.

137. On information and belief, Fuji, with full knowledge of Lexar's ownership interests in the '918 patent, has intentionally induced and is currently inducing others to infringe the '918 patent, or has contributed to the infringement of the '918 patent by actively and knowingly aiding and abetting others to make, use, sell, offer for sale, lease or import flash memory products into the United States, including the Lufkin



Division, that infringe one or more of the claims of the '918 patent, either literally and/or by equivalents.

138. Fuji's infringement of the '918 patent has been willful, and any further infringement of the '918 patent by Fuji would be with full knowledge of Lexar's legal interest in the '918 patent and would be deliberate and willful.

**COUNT SEVENTEEN**  
**Infringement Of United States Patent No. 6,262,918 By Memorex**

139. Lexar incorporates by reference paragraphs 1 through 9 and 27-39 as though fully set forth herein.

140. Lexar has never licensed or permitted Memorex to practice any of the claims granted in the '918 patent.

141. On information and belief, Memorex has infringed the '918 patent, literally and/or by equivalents, by making, using, selling, offering for sale, leasing, or importing flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '918 patent. On information and belief, Memorex continues to engage in such acts of infringement.

142. On information and belief, Memorex, with full knowledge of Lexar's ownership interests in the '918 patent, has intentionally induced and is currently inducing others to infringe the '918 patent, or has contributed to the infringement of the '918 patent by actively and knowingly aiding and abetting others to make, use, sell, offer for sale, lease or import flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '918 patent, either literally and/or by equivalents.

143. Memorex's infringement of the '918 patent has been willful, and any further infringement of the '918 patent by Memorex would be with full knowledge of Lexar's legal interest in the '918 patent and would be deliberate and willful.

**COUNT EIGHTEEN**  
**Infringement Of United States Patent No. 6,262,918 By PNY**

144. Lexar incorporates by reference paragraphs 1 through 9 and 40-52 as though fully set forth herein.

145. Lexar has never licensed or permitted PNY to practice any of the claims granted in the '918 patent.

146. On information and belief, PNY has infringed the '918 patent, literally and/or by equivalents, by making, using, selling, offering for sale, leasing, or importing flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '918 patent. On information and belief, PNY continues to engage in such acts of infringement.

147. On information and belief, PNY, with full knowledge of Lexar's ownership interests in the '918 patent, has intentionally induced and is currently inducing others to infringe the '918 patent, or has contributed to the infringement of the '918 patent by actively and knowingly aiding and abetting others to make, use, sell, offer for sale, lease or import flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '918 patent, either literally and/or by equivalents.

148. PNY's infringement of the '918 patent has been willful, and any further infringement of the '918 patent by PNY would be with full knowledge of Lexar's legal interest in the '918 patent and would be deliberate and willful.

**COUNT NINETEEN**  
**Infringement Of United States Patent No. 6,141,249 By Fuji**

149. Lexar incorporates by reference paragraphs 1 through 26 as though fully set forth herein.

150. Lexar is the owner of all right, title, and interest in United States Patent No. 6,141,249 ("the '249 patent"), which was duly and legally issued to Lexar on October 31, 2001 and entitled "Organization Of Blocks Within A Nonvolatile Memory Unit To Effectively Decrease Sector Write Operation Time." A copy of the '249 patent is attached hereto as Exhibit G.

151. Lexar has never licensed or permitted Fuji to practice any of the claims granted in the '249 patent.

152. On information and belief, Fuji has infringed the '249 patent, literally and/or by equivalents, by making, using, selling, offering for sale, leasing, or importing flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '249 patent. On information and belief, Fuji continues to engage in such acts of infringement.

153. On information and belief, Fuji, with full knowledge of Lexar's ownership interests in the '249 patent, has intentionally induced and is currently inducing others to infringe the '249 patent, or has contributed to the infringement of the '249 patent by actively and knowingly aiding and abetting others to make, use, sell, offer for

sale, lease or import flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '249 patent, either literally and/or by equivalents.

154. Fuji's infringement of the '249 patent has been willful, and any further infringement of the '249 patent by Fuji would be with full knowledge of Lexar's legal interest in the '249 patent and would be deliberate and willful.

**COUNT TWENTY**  
**Infringement Of United States Patent No. 6,141,249 By Memorex**

155. Lexar incorporates by reference paragraphs 1 through 9 and 27-39 as though fully set forth herein.

156. Lexar has never licensed or permitted Memorex to practice any of the claims granted in the '249 patent.

157. On information and belief, Memorex has infringed the '249 patent, literally and/or by equivalents, by making, using, selling, offering for sale, leasing, or importing flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '249 patent. On information and belief, Memorex continues to engage in such acts of infringement.

158. On information and belief, Memorex, with full knowledge of Lexar's ownership interests in the '249 patent, has intentionally induced and is currently inducing others to infringe the '249 patent, or has contributed to the infringement of the '249 patent by actively and knowingly aiding and abetting others to make, use, sell, offer for sale, lease or import flash memory products into the United States, including the

Lufkin Division, that infringe one or more of the claims of the '249 patent, either literally and/or by equivalents.

159. Memorex's infringement of the '249 patent has been willful, and any further infringement of the '249 patent by Memorex would be with full knowledge of Lexar's legal interest in the '249 patent and would be deliberate and willful.

**COUNT TWENTY-ONE**  
**Infringement Of United States Patent No. 6,141,249 By PNY**

160. Lexar incorporates by reference paragraphs 1 through 9 and 40-52 as though fully set forth herein.

161. Lexar has never licensed or permitted PNY to practice any of the claims granted in the '249 patent.

162. On information and belief, PNY has infringed the '249 patent, literally and/or by equivalents, by making, using, selling, offering for sale, leasing, or importing flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '249 patent. On information and belief, PNY continues to engage in such acts of infringement.

163. On information and belief, PNY, with full knowledge of Lexar's ownership interests in the '249 patent, has intentionally induced and is currently inducing others to infringe the '249 patent, or has contributed to the infringement of the '249 patent by actively and knowingly aiding and abetting others to make, use, sell, offer for sale, lease or import flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '249 patent, either literally and/or by equivalents.

164. PNY's infringement of the '249 patent has been willful, and any further infringement of the '249 patent by PNY would be with full knowledge of Lexar's legal interest in the '249 patent and would be deliberate and willful.

**COUNT TWENTY-TWO**  
**Infringement Of United States Patent No. 5,479,638 By Fuji**

165. Lexar incorporates by reference paragraphs 1 through 26 as though fully set forth herein.

166. Lexar purchased United States Patent No. 5,479,638 ("the '638 patent") from Cirrus Logic, Inc. in 1996. Lexar is the current owner of all right, title, and interest in the '638 patent, which was duly and legally issued on December 26, 1995 and entitled "Flash Memory Mass Storage Architecture Incorporation Wear Leveling Technique." A copy of the '638 patent is attached hereto as Exhibit H.

167. Lexar has never licensed or permitted Fuji to practice any of the claims granted in the '638 patent.

168. On information and belief, Fuji has infringed the '638 patent, literally and/or by equivalents, by making, using, selling, offering for sale, leasing, or importing flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '638 patent. On information and belief, Fuji continues to engage in such acts of infringement.

169. On information and belief, Fuji, with full knowledge of Lexar's ownership interests in the '638 patent, has intentionally induced and is currently inducing others to infringe the '638 patent, or has contributed to the infringement of the '638 patent by actively and knowingly aiding and abetting others to make, use, sell, offer for

sale, lease or import flash memory products into the United States, including the Lufkin Division, that infringe one or more of the claims of the '638 patent, either literally and/or by equivalents.

170. Fuji's infringement of the '638 patent has been willful, and any further infringement of the '638 patent by Fuji would be with full knowledge of Lexar's legal interest in the '638 patent and would be deliberate and willful.

### **PRAYER FOR RELIEF**

WHEREFORE, Lexar prays for relief as follows:

1. For Lexar's claims for patent infringement against Fuji:
  - a. That Fuji be adjudged to have infringed the '856 patent, the '815 patent, the '051 patent, the '897 patent, the '151 patent, the '918 patent, the '249 patent and the '638 patent;
  - b. That Fuji, its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently restrained and enjoined from directly or indirectly infringing the '856 patent, the '815 patent, the '051 patent, the '897 patent, the '151 patent, the '918 patent, the '249 patent and the '638 patent;
  - c. An accounting for damages by virtue of Fuji's infringement of the '856 patent, the '815 patent, the '051 patent, the '897 patent, the '151 patent, the '918 patent, the '249 patent and the '638 patent;
  - d. An award of damages to compensate Lexar for Fuji's infringement, pursuant to 35 U.S.C. § 284, said damages to be trebled because of Fuji's willful infringement;

e. An assessment of pre-judgment and post-judgment interest and costs against Fuji, together with an award of such interest and costs, in accordance with 35 U.S.C. § 284;

f. That Fuji be directed to pay Lexar's attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. § 285; and

g. That Lexar have such other and further relief as this Court may deem just and proper.

2. For Lexar's claims for patent infringement against Memorex:

a. That Memorex be adjudged to have infringed the '856 patent, the '815 patent, the '051 patent, the '897 patent, the '151 patent, the '918 patent and the '249 patent;

b. That Memorex, its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently restrained and enjoined from directly or indirectly infringing the '856 patent, the '815 patent, the '051 patent, the '897 patent, the '151 patent, the '918 patent and the '249 patent;

c. An accounting for damages by virtue of Memorex's infringement of the '856 patent, the '815 patent, the '051 patent, the '897 patent, the '151 patent, the '918 patent and the '249 patent;

d. An award of damages to compensate Lexar for Memorex's infringement, pursuant to 35 U.S.C. § 284, said damages to be trebled because of Memorex's willful infringement;



e. An assessment of pre-judgment and post-judgment interest and costs against Memorex, together with an award of such interest and costs, in accordance with 35 U.S.C. § 284;

f. That Memorex be directed to pay Lexar's attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. § 285; and

g. That Lexar have such other and further relief as this Court may deem just and proper.

3. For Lexar's claims for patent infringement against PNY:

a. That PNY be adjudged to have infringed the '856 patent, the '815 patent, the '051 patent, the '897 patent, the '151 patent, the '918 patent and the '249 patent;

b. That PNY, its officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, be preliminarily and permanently restrained and enjoined from directly or indirectly infringing the '856 patent, the '815 patent, the '051 patent, the '897 patent, the '151 patent, the '918 patent and the '249 patent;

c. An accounting for damages by virtue of PNY's infringement of the '856 patent, the '815 patent, the '051 patent, the '897 patent, the '151 patent, the '918 patent and the '249 patent;

d. An award of damages to compensate Lexar for PNY's infringement, pursuant to 35 U.S.C. § 284, said damages to be trebled because of PNY's willful infringement;


e. An assessment of pre-judgment and post-judgment interest and costs against PNY, together with an award of such interest and costs, in accordance with 35 U.S.C. § 284;

f. That PNY be directed to pay Lexar's attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. § 285; and

g. That Lexar have such other and further relief as this Court may deem just and proper.

Dated: July 10, 2002.

Respectfully submitted,

  
George E. Chandler  
Attorney-In-Charge for Plaintiff  
Lexar Media, Inc.  
State Bar No. 04094000  
Chandler Law Offices  
207 E. Frank Poland Professional Building  
P.O. Box 340  
Lufkin, Texas 75902  
Telephone: (936) 632-7778  
Facsimile: (936) 632-1304  
E-mail: gchandler@chandlerlawoffices.com

OF COUNSEL:

THE LAW OFFICES OF CLAYTON E. DARK, JR.  
Clayton E. Dark, Jr.  
State Bar No. 05384500  
P.O. Box 2207  
Lufkin, Texas 75902  
Telephone: (936) 637-1733  
Facsimile: (936) 637-2897

THE RICHARDS LAW FIRM

R. W. ("Ricky") Richards

State Bar No. 16854100

P.O. Box 1309

Jacksonville, Texas 75766

Telephone: (903) 586-2544

Facsimile: (903) 586-6529

THE LAW OFFICES OF CLAUDE E. WELCH

Claude E. Welch

State Bar No. 21120500

P.O. Box 1574

Lufkin, Texas 75902

Telephone: (936) 639-3311

Facsimile: (936) 639-3049

WEIL, GOTSHAL & MANGES LLP

David J. Healey

State Bar No. 09327980

Anita E. Kadala

State Bar No. 00786007

700 Louisiana, Suite 1600

Houston, Texas 77002

Telephone: (713) 546-5000

Facsimile: (713) 224-9511

E-mail: david.healey@weil.com

E-mail: anita.kadala@weil.com